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No. 98-636

In the
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1998

HONORABLE ALAN K. SILBERSTEIN, THOMAS SCHNEIDER, ESQUIRE, SIGMUND MORAWSKI, ESQUIRE, ADMINISTRATOR OF THE ESTATE OF KEVIN R. MURRAY, DECEASED, PHILADELPHIA MUNICIPAL COURT, CITY OF PHILADELPHIA, FIRST JUDICIAL DISTRICT OF PENNSYLVANIA, AND ADMINISTRATIVE OFFICE OF PENNSYLVANIA COURTS.

Honorable Alan K. Silberstein and Thomas Schneider, Esquire,
Petitioners

v.

KATHLEEN ZWAAN,
Respondent

On Petition For a Writ of Certiorari to the
United States Court of Appeals
for the Third Circuit

REPLY OF PETITIONERS, THE HONORABLE ALAN K. SILBERSTEIN AND THOMAS D. SCHNEIDER, TO RESPONDENT KATHLEEN ZWAAN'S RESPONSE IN OPPOSITION TO PETITIONERS' MOTION TO DEFER CONSIDERATION OF PETITION FOR WRIT OF CERTIORARI

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Kathleen Zwaan's response to Judge Silberstein's petition to defer consideration of his certiorari petition misses the mark entirely. Count VI of respondent's complaint alleges that Judge Silberstein violated Zwaan's First Amendment rights by termination Zwaan's contract with the Philadelphia Municipal Court. Judge Silberstein contends that he is entitled to qualified immunity for the act of terminating Zwaan's contract with the Philadelphia Municipal Court, because the First Amendment rights of independent contractors did not become clearly established until five months after termination of Zwaan's contract, when this Court entered its landmark decisions in Board of County Commissioners v. Umbehr, 518 U.S. --, 116 S.Ct. 2342 (1996) and O'Hare Truck Service v. City of Northlake, 518 U.S. --, 116 S.Ct. 2353 (1996). Zwaan responds irrelevantly that Judge Silberstein stigmatized her in the media and invaded her privacy. These dubious claims have no bearing upon the first issue in Judge Silberstein's petition: was the law clearly established at the time of termination of Zwaan's government contract that Zwaan possessed a First Amendment right to retain her contract?

Zwaan's immaterial response does not obscure the importance of Judge Silberstein's certiorari petition, which gives this Court the opportunity to resolve the longstanding conflict in the circuits over the meaning of "clearly established law." Because this issue is at the heart of three cases currently awaiting decision in this Court, Conn v. Gabbert, No. 97-1802, Hanlon v. Berger, No. 97-1927, and Wilson v. Layne, No. 98-83, this Court should defer consideration of the certiorari petition in this case pending the decisions in Conn, Hanlon and Wilson. Alternatively, this Court should: (1) grant certiorari to decide this important issue; (2) adopt the narrow standard of "clearly established law" enforced in the Sixth and Eleventh Circuits under which the law is "clearly established" only by decisions of this Court, the circuit in which the case

arises, or the highest court of the state in which the case arises; and (3) hold that Judge Silberstein is entitled to qualified immunity for the termination of Zwaan's contract under this bright-line standard.

WHEREFORE, petitioners, the Honorable Alan K. Silberstein and Thomas D. Schneider, move this Court to defer consideration of the petition for writ of certiorari in the above-captioned case pending the Court's decision in Conn v. Gabbert, No. 97-1802, Hanlon v. Berger, No. 97-1927, and Wilson v. Layne, No. 98-83, or, in the alternative, to grant certiorari in the above-captioned case to review the "clearly established law" issue herein together with the "clearly established law" issue in Conn, Hanlon and Wilson.

Respectfully submitted:

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